



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABO (USA) Inc.
2653 NW 20th Street
Miami, FL 33142

DRAFT

Attn: *Shintaro Saiga*
President

Dear Mr. Saiga:

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has reason to believe that ABO (USA) Inc. (“ABO”) violated the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979 (the “Act”),² on two occasions. Specifically, BIS charges that ABO committed the following violations:

Charge 1 (15 C.F.R. §764.2(d) - Conspiracy - Conspiracy to Export Night Vision Scopes to Japan without the Required Licenses)

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred from 1995 through 1997. The Regulations governing the violations at issue are found in the 1995 through 1997 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996)) (the “former Regulations”), and 15 C.F.R. Parts 730-774 (1997)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25, 1996 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations define the various violations that BIS alleges occurred in 1995 and 1996, and the Regulations define the various violations that BIS alleges occurred on or after January 1, 1997 and establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 *Fed. Reg.* 47833 (August 11, 2003)), has continued the Regulations in effect under IEEPA.



Beginning in 1995 and continuing into 1997, ABO conspired and acted in concert with others, known and unknown, to violate the former regulations and Regulations. The goal of the conspiracy was to evade Department of Commerce export licensing requirements relating to night vision scopes and to export night vision scopes from the United States to Japan without the required Department of Commerce licenses. To accomplish the conspiracy, the conspirators, including ABO, took actions in furtherance of the conspiracy, including falsifying invoices and shipping documents and disassembling the night vision scopes before exporting them from the United States to Japan to avoid detection by U.S. authorities, including the Department of Commerce. In doing so, ABO committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(a) - Engaging in Prohibited Conduct - Export of Night Vision Scopes Without the Required Licenses)

On or about February 28, 1997, ABO exported or caused to be exported items subject to the Regulations, specifically night vision scopes, models Night Ranger 150 and Night Ranger 250; from the United States to Japan without the required Department of Commerce license. An export license was required for the export of the Night Vision scopes, which were classified under ECCN 6A002.c on the Commerce Control List, from the United States to Japan by Section 742.6 of the Regulations. In doing so, ABO committed one violation of Section 764.2(a) of the Regulations.

Accordingly, ABO is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If ABO fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If ABO defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to ABO. The Under Secretary for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

ABO is further notified that it is entitled to an agency hearing on the record if ABO files a

³ See 15 C.F.R. § 6.4(a)(2).

ABO (USA) Inc.
Charging Letter
Page 3

written demand for one with its answer. (Regulations, Section 766.6). ABO is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, ABO's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of ABO's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Melissa B. Mannino
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Melissa B. Mannino is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through her. She may be contacted by telephone at (202) 482-5301.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
ABO (USA) INC.)
2653 NW 20th Street)
Miami, FL 33142,)
)
Respondent.)
)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Respondent, ABO (USA) Inc. ("ABO"), and the Bureau of Industry and Security, United States Department of Commerce ("BIS") (collectively referred to as "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) ("Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act"),²

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred from 1995 through 1997. The Regulations governing the violations at issue are found in the 1995 through 1997 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996)) (the "former Regulations"), and 15 C.F.R. Parts 730-774 (1997)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25, 1996 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations define the various violations that BXA alleges occurred in from 1995-1996, and the Regulations define the various violations that BXA alleges occurred on or after January 1, 1997 and establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive



WHEREAS, BIS has notified ABO of its intention to initiate an administrative proceeding against ABO, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to ABO that alleged that ABO committed two violations of the Regulations, specifically:

1. *One Violation of 15 C.F.R. §764.2(d) - Conspiracy - Conspiracy to Export Night Vision Scopes to Japan without the Required Licenses:* Beginning in 1995 and continuing into 1997, ABO conspired and acted in concert with others, known and unknown, to violate the former regulations and Regulations. The goal of the conspiracy was to evade Department of Commerce export licensing requirements relating to night vision scopes and to export night vision scopes from the United States to Japan without the required Department of Commerce licenses. To accomplish the conspiracy, the conspirators, including ABO, took actions in furtherance of the conspiracy, including falsifying invoices and shipping documents and disassembling the night vision scopes before exporting them from

Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1707 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (3 C.F.R., 2002 Comp. 306 (2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.



the United States to Japan to avoid detection by U.S. authorities, including the Department of Commerce.

2. *One Violation of 15 C.F.R. §764.2(a) - Engaging in Prohibited Conduct - Export of Night Vision Scopes Without the Required Licenses:* On or about February 28, 1997, ABO exported or caused to be exported items subject to the Regulations, specifically night vision scopes, models Night Ranger 150 and Night Ranger 250; from the United States to Japan without the required Department of Commerce license. An export license was required for the export of the Night Vision scopes, which were classified under ECCN 6A002.c on the Commerce Control List, from the United States to Japan by Section 742.6 of the Regulations.

WHEREAS, ABO has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, ABO fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

WHEREAS, ABO enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, ABO states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

(49)

WHEREAS, ABO neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, ABO wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, ABO agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over ABO, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against ABO in complete settlement of the violations of the Regulations set forth in the proposed charging letter:

- a. ABO shall be assessed a civil penalty in the amount of \$20,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
- b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to ABO. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of ABO's export privileges for a period of one year from the date of imposition of the penalty.

- c. For a period of two years from the date of the Order, ABO (USA) Inc., its successors or assigns, and, when acting for or on behalf of ABO, its officers, representatives, agents or employees (“denied persons”) may not, participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States to any destination other than Canada, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:
- i. Applying for, obtaining, or using any license, License Exception, or export control document relating to any destination other than Canada;
 - ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States to any destination other than Canada, that is subject to the Regulations, or in any other activity subject to the Regulations; or
 - iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to any destination other than Canada, that is subject to the Regulations, or in any other activity subject to the Regulations.



- d. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the \$20,000 civil penalty set forth in paragraph 2.a. shall be suspended for a period of one year from the entry of the appropriate Order, and shall thereafter be waived, provided that during the period of suspension, ABO has committed no violation of the Act or any regulation, order or license issued thereunder.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, ABO hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order, BIS will not initiate any further administrative proceeding against ABO in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement

55

in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

ABO (USA) Inc.



Mark D. Menefee
Director
Office of Export Enforcement



Shintaro Saiga
President

Date: 11/13/03

Date: 11/05/03

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
ABO (USA) INC.)
2653 NW 20th Street)
Miami, FL 33142,)
)
Respondent.)
_____)

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) having notified ABO (USA) Inc. (“ABO”) of its intention to initiate an administrative proceeding against ABO pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) (“Regulations”), and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”)¹, based on the proposed charging letter issued to ABO that alleged ABO committed two violations of the Regulations. Specifically, the charges are:

¹ From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

1. *One Violation of 15 C.F.R. §764.2(d) - Conspiracy - Conspiracy to Export Night Vision Scopes to Japan without the Required Licenses:* Beginning in 1995 and continuing into 1997, ABO conspired and acted in concert with others, known and unknown, to violate the former regulations and Regulations. The goal of the conspiracy was to evade Department of Commerce export licensing requirements relating to night vision scopes and to export night vision scopes from the United States to Japan without the required Department of Commerce licenses. To accomplish the conspiracy, the conspirators, including ABO, took actions in furtherance of the conspiracy, including falsifying invoices and shipping documents and disassembling the night vision scopes before exporting them from the United States to Japan to avoid detection by U.S. authorities, including the Department of Commerce.
2. *One Violation of 15 C.F.R. §764.2(a) - Engaging in Prohibited Conduct - Export of Night Vision Scopes Without the Required Licenses:* On or about February 28, 1997, ABO exported or caused to be exported items subject to the Regulations, specifically night vision scopes, models Night Ranger 150 and Night Ranger 250; from the United States to Japan without the required Department of Commerce license. An export license was required for the export of the Night Vision scopes, which were classified under ECCN 6A002.c on the Commerce Control List, from the United States to Japan by Section 742.6 of the Regulations.

BIS and ABO having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and

conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$20,000 is assessed against ABO, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, ABO will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that for a period of two years from the date of this Order, ABO (USA) Inc., 2653 NW 20th Street, Miami, FL 33142, its successors or assigns, and when acting for or on behalf of ABO, its officers, representatives, agents or employees (“denied person”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States to any destination other than Canada, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document relating to any destination other than Canada;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or

otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States to any destination other than Canada, that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to any destination other than Canada, that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport other than to Canada, to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to any destination other than Canada, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to any destination other than Canada;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to any destination other than Canada; or

- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to any destination other than Canada, and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to any destination other than Canada. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to ABO by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

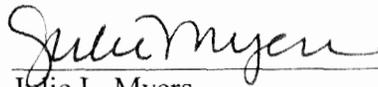
SIXTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SEVENTH, that, as authorized by Section 766.18(c) of the Regulations, the \$20,000 civil penalty set forth above shall be suspended in its entirety for one year from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, ABO has committed no violation of the Act or any regulation, order or license issued thereunder.

EIGHTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

ABO (USA) Inc.
Order
Page 6

This Order, which constitutes the final agency action in this matter, is effective immediately.



Julie L. Myers
Assistant Secretary of Commerce
for Export Enforcement

Entered this 15th day of December 2003.